

**REMARKS**

Claims 1-12 were pending in the present application. Claims 1, 4 and 5 have been amended and claims 3 and 7-9 have been canceled without prejudice. The remarks made herein are designed to place the case in condition for allowance. As such, Applicants respectfully request that the remarks made herein be entered and fully considered.

**Information Disclosure Statement**

As requested by the Examiner, Applicants submit herewith a revised Information Disclosure Statement which contains the associated date for each citation.

**Rejection of Claims 1-12 Under 35 U.S.C. §112, first paragraph**

Claims 1-12 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner acknowledges that “[a]pplicants have deposited the organisms (see claim 1(a)) under the terms of the Budapest treaty but there is no indication in the specification as to the public availability.” The Examiner then requests that Applicants submit a declaration, affidavit or statement by an attorney of record, stating that the strain will be irrevocably and without restriction or condition released to the public upon issuance of the patent.

Upon review of the file history of the present case, Applicants note that a Statement of Biological Deposit was submitted to the U.S. Patent and Trademark Office upon filing of the present patent application. For the Examiner’s convenience, Applicants submit herewith a copy of 1) the Statement of Biological Deposit; 2) the application transmittal; and 3) postcard which were submitted upon filing of the present application on July 24, 2003. Therefore, Applicants respectfully request reconsideration and withdrawal of the foregoing 35 U.S.C. §112, first paragraph rejection over claim 1-12.

**Rejection of Claims 1-2 and 7-12 Under 35 U.S.C. §112, first paragraph**

Claims 1-2 and 7-12 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner was unable to find support for the hybridization and wash conditions recited in claim 1b) and therefore considers the subject matter as new matter.

Applicants respectfully traverse this rejection as the hybridization and wash conditions recited in claim 1b) can be found in the specification of the priority document, which has been incorporated by reference, namely U.S. Provisional Application Serial Number 60/111,938. Specifically, support for the recited hybridization and wash conditions can be found at lines 21-24 on page 20 of 60/111,938. Therefore, Applicants respectfully request reconsideration and withdrawal of the foregoing 35 U.S.C. §112, first paragraph rejection over claim 1-2 and 7-12.

**Rejection of Claims 1-2 and 6-12 Under 35 U.S.C. §112, first paragraph**

Claims 1-2 and 6-12 are rejected under 35 U.S.C. §112, first paragraph, because “[t]he specification, while being enabling for methods of identifying kinase activity of SEQ ID NO:2 and its claimed variants, does not reasonably provide enablement for any activity of said products beyond kinase activity.

Applicants respectfully traverse this rejection, however in order to expedite prosecution, and without acquiescing to the Examiner’s rejection, Applicants have amended claim 1 as suggested by the Examiner to specify “kinase activity”. Therefore, Applicants respectfully request reconsideration and withdrawal of the foregoing 35 U.S.C. §112, first paragraph rejection over claims 1-2 and 6-12.

**Rejection of Claims 1 and 3-12 Under 35 U.S.C. §112, first paragraph**

Claims 1 and 3-12 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Specifically, the Examiner rejected claim 1e) and dependent claims 3-12 because “The specification does not teach about activities of polypeptides consisting of 25 amino acids of SEQ ID NO:2.”

Applicants respectfully traverse this rejection, however in order to expedite prosecution, and without acquiescing to the Examiner's rejection, Applicants have canceled claim 1e), thereby rendering the Examiner's rejection moot. Therefore, Applicants respectfully request reconsideration and withdrawal of the foregoing 35 U.S.C. §112, first paragraph rejection over claims 1 and 3-12.

**Rejection of Claims 1 and 3-12 Under 35 U.S.C. §102(b)**

Claims 1 and 3-12 are rejected under 35 U.S.C. §102(b) as being anticipated by Plowman et al. (WO200073469, 12/2000) because the Examiner was unable to find support in the parent specification for the hybridization and wash conditions recited in claim 1b). The Examiner therefore states that the present application can only benefit from the filing date of July 23, 2003, hence stating that Plowman anticipates claims 1 and 3-12. As stated above, Applicants were able to find the exact hybridization and wash conditions recited in claim 1b) in the specification of the parent application, namely 60/111/938, filed December 11, 1998. Therefore, Applicants are entitled to the December 11, 1998 filing date and therefore Plowman is not anticipatory art over claim 1b). Applicants therefore respectfully request reconsideration and withdrawal of the foregoing 35 U.S.C. §102(b) rejection over claims 1 and 3-12.

**CONCLUSION**

In view of the amendments and remarks made herein, Applicants respectfully submit that the rejections presented by the Examiner are now overcome and that this application is now in condition for allowance. Early notice to this effect is solicited.

If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned.

It is believed that this paper is being filed timely and that a one month extension of time is required. In the event any additional extensions of time are necessary, the undersigned hereby authorizes the requisite fees to be charged to Deposit Account No. 501668.

Entry of the remarks made herein is respectfully requested.

<u>January 11, 2005</u>	<p>MILLENNIUM PHARMACEUTICALS, INC.</p> <p>By <u><i>Mario Cloutier</i></u></p> <p>Mario Cloutier Limited Recognition Under 37 C.F.R. §10.9(b) 40 Lansdowne Street Cambridge, MA 02139 Telephone – (617) 577-3522 Facsimile – (617) 551-8820</p>
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**BEFORE THE OFFICE OF ENROLLMENT AND DISCIPLINE  
UNITED STATE PATENT AND TRADEMARK OFFICE**

**LIMITED RECOGNITION UNDER 37 CFR § 10.9(b)**

Mario Cloutier is hereby given limited recognition under 37 CFR, 10.9(b) as an employee of Millenium Pharmaceuticals to prepare and prosecute patent applications wherein Millenium Pharmaceuticals is the assignee of record of the entire interest in the invention claimed in the application. This limited recognition shall expire on the date appearing below, or when whichever of the following events first occurs prior to the date appearing below: (i) Mario Cloutier ceases to lawfully reside in the United States, (ii) Mario Cloutier's employment with Millenium Pharmaceuticals ceases or is terminated, or (iii) Mario Cloutier ceases to remain or reside in the United States on an H-1 visa.

This document constitutes proof of such recognition. The original of this document is on file in the Office of Enrollment and Discipline of the U.S. Patent and Trademark Office.

**Expires: March 1, 2005**

**Harry I. Moatz  
Director of Enrollment and Discipline**